

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff-Respondent,)	
)	
vs.)	Case No. CR-06-136-M
)	(CIV-13-943-M)
JAMES LEE EDWARDS, JR.,)	
)	
Defendant-Movant.)	

ORDER

Defendant-Movant James Lee Edwards, Jr. (“Edwards”), a federal prisoner, filed a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody on September 3, 2013. On September 25, 2013, plaintiff-respondent United States of America filed its response to Edwards’ motion, and on October 16, 2013, Edwards filed his reply to the government’s response.

Edwards’ § 2255 motion is solely based upon the United States Supreme Court’s recent decision in *Alleyne v. United States*, 133 S. Ct. 2151 (2013). In *Alleyne*, the Supreme Court overruled prior Supreme Court case law and held that under the Sixth Amendment:

Any fact that, by law, increases the penalty for a crime is an “element” that must be submitted to the jury and found beyond a reasonable doubt. Mandatory minimum sentences increase the penalty for a crime. It follows, then, that any fact that increases the mandatory minimum is an “element” that must be submitted to the jury.

Id. at 2155 (citation omitted). The United States Court of Appeals for the Tenth Circuit, however, has recently held that *Alleyne* does not apply retroactively to cases on collateral review. *See In re Payne*, No. 13-5103, 2013 WL 5200425 (10th Cir. Sept. 17, 2013). Accordingly, the Court finds that Edwards’ § 2255 motion should be denied.

Accordingly, the Court DENIES Edwards' Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody.

IT IS SO ORDERED this 22nd day of October, 2013.


VICKI MILES-LAGRANGE
CHIEF UNITED STATES DISTRICT JUDGE